

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CHANEY SHAPIRO
Plaintiff,

Case No. 20STUD02828

v.

**ORDER FOR ENTRY OF
JUDGMENT**

Elishba Iturra, Erik Christopher Seidenglanz
Defendants.

This matter came on for a non-jury trial on July 2, 2021, in Department 91 of the above-entitled Court. Having considered the evidence presented, testimony of the witnesses, and arguments of the parties, the Court now rules as follows.

Background

Cheney Shapiro purchased the property located at 1410 Ewing Street, Los Angeles CA 90026 (the "Property") from Longplatt Co. on March 3, 2020. Within a month of the purchase, Shapiro inspected the property and determined that the front door was padlocked, the windows were so filthy he could barely see inside, it appeared as if no one lived there, and that the building was dilapidated. Defendants Erik Seidenglanz and Elishba Iturra moved into the property on November 9, 2016. They never paid any rent to Longplatt Co. or Chaney Shapiro.

The previous owner, Longplatt Co., served Defendants with a 5-Day Notice to Quit Premises (Ex 1, "Notice") by posting and mailing on March 21, 2020. A forcible detainer action was filed September 1, 2020. Defendants remain in possession of the Property.

The Trial

Plaintiff offered the testimony of 3 witnesses: Chaney Shapiro, Joshua Marcuson, and Panos Panoyrn. Marcuson testified that he did not remember when he had visited the property, but when he did, he knocked on the door and did not notice if anyone was living at the property. There was no answer at the door although he had heard that there may have been squatters living at the property. He testified that he did not see anyone living at the property although the windows were dirty and remnants of old curtains were obscuring the ability to see inside of the property. He installed cameras inside and outside the property and subsequently captured images of Erik Seidenglanz removing one of the cameras which he had installed.

Elishba Iturra Seidenglanz testified that she and Seidenglanz began living at the property on November 9, 2016 and that they took good care of the landscaping. She testified that rent was never paid to Shapiro, Marcason, Longplatt Co or a bank. Erik Seidenglanz testified that he and his wife were going through problems, his wife had health issues including narcolepsy, he traveled back and forth between San Francisco and Los Angeles and between Arizona and Los Angeles, and that he and his wife had lived at the property for 4 ½ years, having moved in on November 9, 2016. Panos Panoyrn, a registered process server, testified in rebuttal for the Plaintiff that he served the 5 day Notice by posting and mailing and that the property was in such a state of disrepair that he had cut his finger while posting the notice onto the old wooden front door of the property.

At the conclusion of the trial, Plaintiff's counsel moved to add a second cause of action of unlawful detainer, which was granted.

Discussion

CCP §1160 (a) provides that a person is guilty of a forcible detainer who either:

- (1) By force, or by menaces and threats of violence, *unlawfully* holds and keeps the possession of any real property, whether the same was acquired peaceably or otherwise.
- (2) Who, in the night-time, or during the absence of the occupant of any lands, *unlawfully enters* upon real property, and who, after demand made for the surrender thereof, for the period of 5 days, refuses to surrender the same to such former occupant. (Italics added.)

CCP § 1172 provides:

On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at

the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer. The defendant may show in his defense that he or his ancestors, or those whose interest in such premises he claims, have been in the quiet possession thereof for the space of one whole year together next before the commencement of the proceedings, and that his interest therein is not then ended or determined; and such showing is a bar to the proceedings.

A Plaintiff cannot prevail on cause of action for forcible detainer unless an unlawful entry has occurred. (*Jordan v. Talbot* (1961) 55 cal.2d597,603 (forcible detainer found where entry was without consent); *Bedi v. McMullan* (1984) 160 Cal.App.3d 272,274 (valid cause of action for forcible detainer where complaint alleged landlord entered property under invalid writ of execution issued under judgment that had been set aside); *Glass v. Najafi* (2000) 78 cal.App.4th 45,51 (no forcible detainer where entry made "pursuant to "orderly legal process").) Moreover, to establish a cause of action for forcible detainer, the plaintiff must establish that they were in actual possession or were entitled to possession *at the time that the entry occurred*. (CCP section 1160(b) ["The occupant of real property, within the meaning of this section is one who, within 5 days seating such unlawful entry, was in the peaceable and undisturbed possession of such lands."], 1172 ["On the trial of any proceeding for any forcible entry or forcible detainer, the plaintiff shall only be required to show, in addition to the forcible entry or forcible detainer complained of, that he was peaceably in the actual possession at the time of the forcible entry, or was entitled to the possession at the time of the forcible detainer."]; see also *White v. Pfeiffer* (1913) 165 Cal.740, 742 [discussing CCP § 1172].)

Here, Defendants moved into the property 4 ½ years ago. As such, plaintiff has failed to establish that the defendants unlawfully entered the property and have not established a forcible detainer. To the extent that Plaintiff amended the complaint to add a claim of unlawful detainer, Plaintiff's only served a 5-day Notice not the applicable 30-day Notice, and as such, Plaintiff's fails to establish this cause of action as well.

Accordingly, for the reasons set forth above, the Court enters judgment for Defendants.

IT IS SO ORDERED.

DATED: JUL 13 2021



George Bird
Judge, Los Angeles Superior Court